

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 31, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP2386-CR

Cir. Ct. No. 2013CF53

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KARL O.D. BLATTERMAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Washburn County:
EUGENE D. HARRINGTON, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Karl Blatterman appeals a judgment of conviction for fifth-offense operating a motor vehicle while intoxicated (OWI). Blatterman challenges the reasonableness of the traffic stop. We affirm.

¶2 A criminal complaint charged Blatterman with one count of OWI, fifth or sixth offense, and one count of operating after revocation. A test of Blatterman's blood revealed his blood alcohol concentration was .244 at the time of the traffic stop, more than twelve times his legal limit of .02. An Information subsequently added one count of operating with a prohibited alcohol concentration, fifth or sixth offense. Blatterman sought suppression of the evidence based on an unlawful traffic stop, which motion was denied after a hearing. Blatterman then pled no contest to OWI fifth and the remaining charges were dismissed. The circuit court withheld sentence and placed Blatterman on three years' probation. Blatterman now appeals.

¶3 Reasonable suspicion that a traffic law has been, or is being, violated is sufficient to justify all traffic stops. *See State v. Houghton*, 2015 WI 79, ¶¶29-30, 364 Wis. 2d 234, 868 N.W.2d 143. An investigative traffic stop may be supported by reasonable suspicion even when the police officer did not observe the driver violate any law. *State v. Anagnos*, 2012 WI 64, ¶47, 341 Wis. 2d 576, 815 N.W.2d 675. The officer must point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the traffic stop. *Id.*, ¶48.

¶4 The question of what constitutes reasonable suspicion is a common sense test. Under all the facts and circumstances present, what would a reasonable officer suspect at the time of the stop in light of his or her training and experience? *See State v. Anderson*, 155 Wis. 2d 77, 83-84, 454 N.W.2d 763 (1990). If any reasonable inference of wrongful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, the officers have the right to temporarily detain the individual for the purpose of inquiry. *Id.*

¶5 In reviewing a denial of a suppression motion, we will uphold the circuit court's findings of fact unless they are against the great weight and clear preponderance of the evidence. *See State v. Jackson*, 147 Wis. 2d 824, 829, 434 N.W.2d 386 (1989). Whether those facts satisfy the constitutional requirement of reasonableness presents a question of law we decide independently of the circuit court's decision on that issue. *Id.*

¶6 Here, the officer had a reasonable suspicion to believe that Blatterman was driving while intoxicated. Based upon the testimony at the suppression hearing, the circuit court found the officer was running stationary radar when he observed Blatterman's vehicle heading south on Highway 53 at bar-closing time. Blatterman's vehicle was traveling in the left lane at thirty-nine miles per hour in a sixty-five mile-per-hour speed zone. The vehicle accelerated to sixty-one miles per hour and then stopped in the roadway at an intersection. The officer observed the vehicle's reverse lights turn on. Blatterman's vehicle then drove forward on Highway 53 until it reached another intersection, at which point the vehicle performed a U-turn from the left traffic lane rather than the left turn lane. After performing the U-turn, Blatterman's vehicle straddled the left fog line, pulled back into the left lane, crossed two traffic lanes, straddled the right fog line, and then pulled back into the right lane. The totality of these objective facts established a reasonable suspicion of impaired driving, and the officer was justified in conducting a temporary investigative stop to investigate further.

¶7 Blatterman argues the totality of the circumstances did not establish a reasonable suspicion of impaired driving. He contends "[t]here is nothing illegal in and of itself driving below the speed limit." He also contends he was driving slowly because he saw deer crossing the highway and he was driving through a construction zone. Blatterman also challenges the credibility of the officer's

testimony concerning whether he observed the vehicle's reverse lights turn on and whether Blatterman crossed the fog line a second time. Furthermore, Blatterman asserts his instances of driving occurred over a span of more than five miles.

¶8 Doubtless, many innocent explanations for Blatterman's driving could be hypothesized. However, police officers are not required to rule out the possibility of innocent behavior before initiating a traffic stop. *See Anderson*, 155 Wis. 2d at 84. Moreover, witness credibility and the weight of the testimony are to be determined by the trier of fact, and where the circuit court is the fact-finder—such as at a suppression hearing—we will not disturb its credibility determinations because of the superior opportunity of the circuit court to observe the demeanor of the witnesses and to gauge the persuasiveness of their testimony. *See Johnson v Merta*, 95 Wis. 2d 141, 151-52, 289 N.W.2d 813 (1980). Finally, Blatterman provides no legitimate citation to legal authority for the proposition that reasonable suspicion of drunk driving cannot exist unless all of the suspicious driving occurs within a short distance,¹ and we shall therefore not further address the issue. *See M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

¶9 Because we conclude the totality of the facts and circumstances available to the officer gave rise to a reasonable suspicion justifying an investigative stop, it is unnecessary for us to address alternative justifications for

¹ Blatterman cites two cases in support of his claim that a few distinct incidents of suspicious driving occurring over a long distance do not provide a basis for reasonable suspicion. *See State v. Post*, 2007 WI 60, 301 Wis. 2d 1, 733 N.W.2d 634; *State v. Popke*, 2009 WI 37, 317 Wis. 2d 118, 765 N.W.2d 569. Those cases do not stand for that proposition. They merely indicate that whether reasonable suspicion exists should be based upon a review of the totality of the circumstances and in those cases the courts considered the nature of the driving over a short distance before the stop.

the stop, such as apparent traffic law violations. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. This opinion may not be cited except as provided under RULE 809.23(3).

